
(1956) 07 PAT CK 0006

In the Patna High Court

Case No : Misc. Judicial Case No. 71 of 1956

Subodh Ranjan Ghosh

APPELLANT

Vs

Sindri Fertilisers and Chemicals Ltd. and Another

RESPONDENT

Date of Decision : 03-07-1956

Acts Referred:

Constitution of India, 1950 — Article 110, 311, 320, 69(4)

Citation : AIR 1957 Patna 10 : (1957) 2 LLJ 686

Hon'ble Judges : Ramaswami, C.J.; Raj Kishore Prasad, J

Bench : Division Bench

Advocate : B.C. Ghose, A.C. Mitra and Shree Nath Singh, for the Appellant; Lal Behari Lal, Nagendra Kumar Roy, Nakuleshwar Prasad and Shivanugrah Narayan, for the Respondent

Final Decision : Dismissed

Judgement

Ramaswami, C.J.—In this case the petitioner Subodh Ranjan Ghosh has obtained a rule in the High Court calling upon the respondents to show cause why a writ under Article 226 of the Constitution should not be issued for, quashing an order dated 22-12-1955, terminating the services of the petitioner with effect from that, date on payment of six months' salary in lieu of notice. Cause has been shown by counsel on behalf of the respondents to whom notice of the rule was ordered to be given.

2. The petitioner was appointed as a Shift Charge Engineer in the Sindri Fertilizer Project on 35-11-1948, for a term of five years, by the Ministry of Industry and Supply of the Government of India. In the year 1851 a private limited company was constituted, called Sindri Fertilisers and Chemicals Limited, which was owned completely by the Government of India and the management of which was entrusted to a Board of Directors nominated by the President of India and acting under his direction and control.

The share capital of the Company was Rs. 30,00,00,000/- consisting of three

lakhs of shares valued at Rs. 1,900/- each. The President of India was allotted 2,99,999 shares and the Secretary of the Production Ministry was allotted one share. After the Company was constituted, the assets of the Fertilizer Project were transferred to the said Company with effect from 15-1-1952.

The petitioner continued to serve as a Shift Charge Engineer under the Company and later he was employed as an Assistant Superintendent, Power Plant Maintenance. The service agreement between the petitioner and the Government of India is annexure J of the petitioner's affidavit. It is necessary at this stage to quote the material portion of the service agreement:

"ARTICLES OF AGREEMENT made the twentyseventh day of December one thousand nine hundred and fortyeight BETWEEN Mr. Subodh Ranjan Ghosh son of late R.L. Ghosh of the one part and the GOVERNOR GENERAL OF INDIA (hereinafter called the GOVERNMENT") of the other part.

WHEREAS THE GOVERNMENT have engaged the party of the first part and the party of the first part has agreed to serve the Government on the terms and conditions hereinafter contained. " NOW THESE PRESENTS WITNESS and the parties hereto respectively agree as follows:

(1) The party of the first part shall submit himself to the orders of the Government and of the Officers and authorities under whom he may from time to time be placed by the Government and shall remain in the service for the term of five years commencing from the fifteenth day of November 1948 during the first six months whereof (extensible to one year at the discretion of the Government) he shall be on probation, subject to the provisions herein contained.

(2) The party of the first part shall devote his whole time to his duties and at all times obey the rules including the Government Servants Conduct Rules prescribed from time to time for the regulation of the branch of the public service to which he may belong and shall, whenever required, proceed to any part of India and abroad and there perform such duties as may be assigned to him.

3. The service of the party of the first part may be terminated as follows:

(1) By the Government without notice during the said, probationary period.

(2) At any time (except during the said probationary period) on three calendar months' notice in writing given to him by the Government if, in the opinion of the Government, the party of the first part proves unsuitable for the efficient performance of his duties during service under this agreement.

(3) By the Government without previous notice if the Government are satisfied on medical evidence that the party of the first part is unfit and, is likely for a considerable period to continue unfit by reason of ill health for the discharge of his duties. " PROVIDED always that the decision of the Government that the party "of the first part is likely to continue unfit shall be conclusively binding on the party of the first part.

(4) By the Government of their officers having proper authority without any previous notice if the party of the first part shall be guilty of any insubordination, intemperance or other misconduct or of any breach or non-performance of any of the provisions of these presents or of any rules pertaining to the branch of the public service to which he may belong.

(5) By six calendar months" notice in writing given at any time during service under this agreement (except during the said probationary period) either by him to the Government or by the, gOVerment or their authorised officer to him without cause assigned.

PROVIDED always that the Government may in lieu of any notice herein provided for give the party of the first part a sum equivalent to the amount of his pay for six months or shorter notice than six months if they pay him a sum equal to the amount of his pay for the period by which such notice falls short of six months PROVIDED further that in the event of a notice being given under Sub-clause (2) of this Clause the word "three" shall be read in place of the word "six" in the preceding proviso.

The term "pay" for the purpose of this clause shall mean to pay (including special pay and personal pay if any) the party of the first part is receiving under these presents at the time, unless he is receiving officiating pay in which case it shall mean the pay (including special pay and personal pay, if any) of his substantive appointment.

4. If the party of the first part be suspended from duty during investigation into any charge of misconduct mentioned in Sub-clause (4) of Clause 3 hereof, he shall not be entitled to any pay during such period of suspension but shall be entitled to receive a subsistence grant at such rate as the Government may decide to allow him.

5. The scale of pay attached to the post of Shift Charge Engineer in the Power House of the Fertilizer Project. Sindri, to which the party of the first part is appointed shall comprise the following monthly rates of pay in successive stages of twelve months" service:

Stages Pay.

1 Rs. 1000/-

2 Rs. 1,050/-

3 Rs. 1,100/-

4 Rs. 1.150/-

5 Rs. 1,200/-

6 Rs. 1,250/-

7 Rs. 1,300/-

8 Rs. 1,350/-

9 Rs. 1.400/-

10 Rs. 1.450/-

11 Rs. 1500/-

He shall from the date of engagement, namely, the fifteenth day of November one thousand nine hundred & fortyeight be granted pay at the rate of Rupees one thousand per mensem in the aforesaid scale & shall receive pay in the succeeding stages provided for in that scale In accordance with the provisions of the rules from time to time in force & applicable to his case, service in the stages reckoning from the aforesaid date. The pay from time to. time payable to him under these presents shall be paid for such time as he shall serve under this agreement and actually perform his duties, com mencing from the aforesaid date and ceasing on the date of his quitting service or on the day of his discharge therefrom or on the day of his death if he shall die whilst in service. If at any time the party of the first part proceeds on deputation out of India, his pay during the period of his deputation shall be regulated by the ordinary rules regarding deputation. "

6. The party of the first part shall be eligible, subject to the exigencies of the public service, for leave and leave salary under the rules contained in Appendix 10-A of the P and T. Compilation of the Fundamental and Supplementary Rule, Vol. II as amended, from time to time.""

(3) On 22-12-1955, the petitioner received a notice of discharge from the respondents, terminating his service with effect from that date on payment of six months" salary in lieu of notice. The notice of discharge is annexure E of the petitioner"s affidavit. It is in the following terms:--

"To

Shri S.R. Ghosh REP. NO. MD/PS/2. Assistant Superintendent, Power Plant, S. F. C. L. Sindri. Thro" The Superintendent, Power plant, S. F. C. L., Sindri.

Dated, Sindri, the 22nd December, 1955.

In accordance with Clause 3 (5) and its proviso of the service agreement under which you were appointed, your services with the Sindri Fertilizers and Chemicals, Ltd., are hereby terminated on six months" pay in lieu of notice. Please acknowledge receipt of this letter as also:

(a) Cheque No. OZ/121,000839 dated 21-12-55 on the State Bank of India Ltd., for Rs. 6542-4-0 being your six months" pay in lieu of notice:

(b) Cheque No. OZ/121,000840 dated 21-12-55 on the State Bank of India, Ltd., for Rs. 10,266-12-0 being the amount of your and Company"s contribution to the Provident Fund; and

(c) Cheque No. OZ/121,000838 dated 21-12-55 on the State Bank of India Ltd. for Rs. 649-9-0 being the pay from 1-12-1955 to 21-12-1955 both days inclusive.

2. A sum of Rs. 1,000/- has been withheld from the Company's contribution to your Provident Fund settlement, pending production of "no demand" certificate.

3. You are required to vacate your house not later than 21-1-1956, Rent and any other charges due will be recovered from the amount withheld.

For and On Behalf Of Sindri Fertilizers and Chemicals Ltd.

Sd. V. Nilkantan. . " Managing Director."

(4) The case of the petitioner is that the order of discharge is legally invalid since no notice was given to the petitioner and no opportunity was given to him to show cause against the termination of his service. It was alleged on behalf of the petitioner also that the Union Public Service Commission was not consulted in the matter and that under Article 320 of the Constitution it was incumbent upon the respondents to consult the Union Public Service Commission before passing an order of discharge.

It was asserted that the petitioner was holding a civil post under the Union of India, and before an order of removal or termination of service was made the respondents were bound to comply with the requirements of Arts. 311 and 320 of the Constitution. It was submitted on behalf of the petitioner that the petitioner should have been given an opportunity of showing cause against the action proposed to be taken. It was, therefore; contended that the order of discharge made by the respondents on 22-12-1955, was illegal and ultra vires and ought to be quashed by the High Court by a writ in the nature of certiorari.

(5) Respondent 1 is the Company, namely, the Sindri Fertilizers and Chemicals Limited, and respondent 2 is Sri V. Nilkantan, Managing Director of the said Company. In their counter-affidavit respondents 1 and 2 state that the petitioner was not holding a Civil post under the Government of India and that with effect from 15-1-1952, the services of the petitioner under the Government of India terminated and he became a servant of the Company, and, therefore, subject to the full control of the Board of Directors of the said Company.

It was contended that under Article 69 (4) of the Article of Association the Directors of the Company have the power to appoint and remove at their discretion any officer of the Company, whether permanent, temporary or under special contract. The respondents allege that till 15-1-1952 the service agreement between, the petitioner and the Government of India was operative, and thereafter the petitioner continued to serve under the Company on the same terms, subject" to an exception with regard to conditions of leave.

After the petitioner entered into the Company's service, there Was no express contract between the parties, but there was an implied contract and the petitioner continued to serve the Company upon the same terms and conditions

as specified in the service agreement except with regard to the condition of leave. The respondents contend that the service of the petitioner was terminated in accordance with Clause 3 (5) of the service agreement dated 27-12-1948, read with Article 69 (4) of the Articles of Association.

It was submitted on behalf of the respondents that Arts. 311 and 320 of the Constitution have no application to the case and the service of the petitioner was terminated by the respondents in accordance with the terms of the contract.

(6) The first question, therefore, which arises for determination is whether the petitioner holds a civil post under the Union of India and whether the provisions of Articles 311 and 320 of the Constitution apply to this case.

On behalf of the petitioner it was submitted by Mr. B. C. Ghose that on 15-1-1952, the Company took over the assets and liabilities of the Sindri Fertilizer Project and with effect from that date the petitioner was transferred on "foreign service" within the meaning of Fundamental Rule HO, read with Fundamental Rule 9 (7). In support of his argument counsel referred to annexure 1 of his affidavit, which states;

"No. FP-15 (36)754. Pers II, Government of India. Ministry of Works, Production and Supply. Office of the General Manager, (Fertilizer Project) Sindri, dated the 31st December, 1951.

Memorandum.

The undersigned, is directed to state that the Sindri Fertilizers and Chemicals Ltd., will take over the assets and liabilities of the Fertilizer Projects, Sindri, from the Government of India in the Ministry of Works, Production and Supply with effect from the date which will be announced during the course of January, 1952. In terms of P. R. 110, you are, therefore, advised to exercise your option in writing as to whether you are willing to be transferred to foreign service under the Sindri Fertilizers and Chemicals Ltd. Your decision should reach the undersigned by the 5th January, 1952, positively.

Sd. Daulat Singh. For General Manager, (Fertilizer Project)."

7. In my opinion there is no substance in the argument of Mr. B.C. Ghose. The reason is that annexure I was not meant for the petitioner; and the basis for the argument is non-existent. On 31-12-1951, three circulars were issued by the General Manager of the Sindri Fertilizer Project. One such circular is annexure I which I have already quoted. The other two circulars are annexures II and III. Annexure II states;

"No. FP-15 (36)/51. Pers. II, Government of India. Ministry of Works Production and Supply. Office of the General Manager (Fertilizer Project). Sindri, dated the 31st December, 1951.

Memorandum.

The undersigned is directed to state the Sindri Fertilizers and Chemicals Ltd. will take over the assets and liabilities of the Fertilizers Project Sindri, from the Government of India in Ministry of Works, Production and Supply with effect from the date which will be announced in January, 1952. In the event of services of all categories of temporary officers and staff of the project will be deemed to have been automatically transferred to the Company unless anybody wishes to terminate his engagement earlier.

Sd. Daulat Singh For General Manager, (Fertilizer Project)."

Annexure III is in the following terms:--"No. FP-15 (36)/51. Pers, II, Government at India.

Ministry of Works, Production and Supply (Office of the General Manager) (Fertilizer Project). Sindri, dated the 31st December, 1951.

Memorandum.

The undersigned is directed to state that the Sindri Fertilizers and Chemicals Ltd. will take over the "assets and liabilities of the Fertilizers project, Sindri," from the Government of India in the Ministry of Works, Production and Supply with effect from the date which will be announced in January, 1952. In the event your services will be deemed to have been transferred to the Company automatically.

Sd. Daulat Singh, For General Manager (Fertilizer project)."

8. On 14-1-1952, there was another circular issued with regard to "temporary gazetted staff appointed by Government and all contract officers". This circular is very important and it is necessary to quote it in full:

"No. FP-15 (36)/51. Pers". II, Government of India, Ministry of Works, Production and Supply Office of the General Manager (Fertilizer Project)." Sindri, dated the 14th January, 1952.

Memorandum.

Subject: For temporary gazetted staff appointed by Government and all contract officers.

In continuation of the office memorandum No. FP-15 (36)751 Pers. II, dated the 31st December, 1951, it has been decided that Sindri Fertilizer and Chemical Ltd. will take over the assets" and liabilities of the Fertilizer Project, Sindri, with effect from 15-1-52. General Manager desires you to let him know whether you agree to termination of your service under Government with effect from 15-1-52 and the Managing Director of Sindri Fertilizers and Chemicals Ltd., wants you to inform him if you are agreeable to serve under the Company with effect from the same date. The terms and conditions of your service under the Company would be such as the Company may prescribe but not substantially different from what they are at present, except regarding leave.

If the offer is unacceptable to you, notice of termination of your service would be

served on you in due course. Your reply should reach the undersigned by the 20th January, 1952.

Sd. Daulat Singh Personal Officer. "

9. It is stated on behalf of the respondents that Annexure I was meant for permanent Government servants and Annexure III and Annexurs IV were meant for all contract officers and for temporary gazetted staff, The respondents state that Annexures III and IV were meant for the petitioner. In reply (Annexure V) the petitioner expressly refers to Annexure IV, dated the 14th January, 1952, Annexure V is also important and must be reproduced at this stage;--

"Sindri Fertilizers and Chemicals Ltd. Sindri. Dated January 18th, 1952.

"To

The Managing Directors, Sindri Fertilizers and Chemicals Ltd., Sindri.

Through The Superintendent, Power House.

Subject:-- Transfer of service from Government to Sindri Fertilizers and Chemicals Ltd. Sir,

Reference your memorandum No. FP-15-(36)751 Pers. II, dated 14th January, 1952.

2. I am agreeable to transfer of my service from Government of India to the Sindri Fertilizers and Chemicals Ltd. with effect from the 15th January, 1952.

3. As notice of this was given in the advertised conditions under which I applied for the position now held, the terms and conditions of employment should therefore give equal or similar status and privileges as under the Government. I trust that the changes of leave and other rule envisaged in the memorandum are equitable; if they are not, then adequate compensation should be given.

Yours faithfully, Sd. S. R. Ghosh, Shift Change Engineer."

10. It is manifest that Annexures IV and V. are important documents and conclusively determine the point. Annexure IV is an offer on behalf of the Company and Annexure V is an acceptance on behalf of the petitioner of service under the Company. In Annexure IV the Union Government enquired whether the petitioner agreed to termination, of his service under the Government with effect from 15-1-1952, and whether he "was agreeable to serve under the Company with effect from the same date, on such terms and condition as the Company may prescribe," but not substantially different from what they are at present, except regarding leave."

The Government further warned the petitioner that if the offer was unacceptable to him", notice of termination of his service would be served on him in due course". In reply to this letter the petitioner states that he is "agreeable to transfer of his service from Government of India to the Sindri Fertilizers and

Chemicals Ltd., with effect from 15-1-1952." The petitioner adds that "the terms and conditions of employment should give equal or similar status and privileges as under the Government" and that "the changes of leave and other rules envisaged in the memorandum should be equitable and, if they are not, adequate compensation should be given".

In my opinion, these two documents, namely, Annexures IV and V, conclusively indicate that the petitioner agreed to the termination of his service under the Government with effect from 15-1-1952 and that he accepted service under the Company with effect from the same date. This conclusion is supported also by the endorsement in Annexure P, the notice of discharge, served upon the petitioner.

The petitioner claims therein that he is "a permanent employee of the Company". There is also another important circumstance. Annexure IX of the Supplementary counter-affidavit is a copy of Government notification dated 16-1-1953 from which it appears that the petitioner ceased to be a gazetted officer under the Central Government "with effect from the 16th of January, 1952". The Government notification is in the following terms:

"Government of India. Ministry of Production. New Delhi, the 18th January, 1953. Notification.

No. Fy. 3 (186)/51. Consequent on the formation of Sindri Fertilizers and Chemicals Ltd. the following officers of the late Fertilizer Project, Sindri ceased to be gazetted officers under the Central Government with effect from the 16th January, 1952.

Name of officer, Designation,

....

8. Sri S.R. Ghosh.

Shift Charge Engineer, Power H,

.. ..

Sd/- (D.S. Banegal). Under Secretary to the Government of India"

11. On the first question, therefore, my concluded opinion is that the petitioner was not in the Civil Service of the Union Government, that he did not hold a civil post under the Union Government after 15-1-1952, and that the petitioner was in the employment of the Company with effect from that date.

12. It was submitted by Mr. B. C. Ghose that even if the petitioner was a servant of the Company after 15-1-1952, still the question of his discharge or termination of service would be governed by Arts. 311 and 320 of the Constitution and the petitioner was entitled to protection under the provisions contained in those Articles. Counsel pointed out that the ownership and control of the Company was vested completely in the Union Government. It is the admitted

position that all the shares issued are held either by the President of India or by the Secretary of the Production Department.

It appears that the President of India holds 2,99,999 shares and the remaining share has been allotted to the Secretary of the Production Department. Mr. B.C. Ghose also referred to Article 67 of the Articles of Association and argued that the Directors are appointed by the President who is also authorised to remove any Director from his office in his absolute discretion. It is contended on behalf of the petitioner that the management, of the Company is subject to the full control of the Union Government, not only in matters of policy but also in other matters.

Counsel based his argument on the following Articles, namely, Arts. 6, 28 32, 43, 66, 69 (16) 70, 77 and 82. Counsel also referred to Article 110 by which the President is authorised from time to time "to issue such directives as he may consider necessary in regard to the conduct of the business of the Company or Directors thereof". The Article further provides that the President in like manner may vary or annul any such directive. The Article also imposes a duty upon the Directors to give "immediate effect to directives so issued".

It was, therefore, argued by learned counsel on behalf of the petitioner that the Company was really a department of the Union Government and there was no reason why the servants of the Company should not be deemed to be servants of the Union. Government within the meaning of Arts. 311 and 320 of the Constitution. In other words, the submission on behalf of the petitioner was that the Company was only an "emanation" of the Union, Government and has no independent legal existence. .

In my opinion, the argument of Mr. B. C. Ghose is not correct. It is true that the Company is completely owned by the Union Government and that the Directors are appointed by the President who is also authorised to remove any Director from office in his absolute discretion. It is also true that the President is authorised to issue such directives as he may consider necessary, in regard to the conduct of the business of the Company and under Article 110 a duty is imposed upon the Directors to give immediate effect to the directives so issued by the President.

But in the eye of law the Company is a separate legal entity and has separate legal existence, The Company is a different person altogether from the subscribers to the memorandum, namely, the President or the Secretary to the Government of India. It may be that after incorporation the business is precisely the same as it was before and the same persons are managers and the same hands receive the profits. Still in the eye of law the Company is not the agent of the Union Government or trustee for them.

There is, however, Material to show in this case that financially the Company is a separate entity, from the State Government. On page 10 of the Balance Sheet there is an entry with regard to loans from the Government of India to the extent of Rs. 5,00,00,000/- which is secured by a floating charge on all the assets of the

Company. There is an item with regard to interest to the extent of Rs. 26,00,000/- and odd.

Counsel on behalf of the petitioner also referred; to the fact that the Government emblem, namely, the Asoka pillar, is used on the stationery and pamphlets issued by the Company, but that is not a -conclusive circumstance or even a relevant circumstance for deciding the point at issue. As I have said, the company is an independent legal entity and has an independent legal existence. It is of course a public authority and its purposes are public purposes, but it is not a Government department.

In the eye of law the Company is its own master and it cannot be regarded as an agent of the Government any more than a Company can be regarded as an agent of the shareholders. It follows, therefore, that the servants of the Company are not the servants of the. Union Government and Arts. 311 and 320 of the Constitution has no application to the case of the servant of the Sindri, Fertilizers and "Chemicals limited.

This view is borne out by a decision of an English Court of Appeal in "Tamlin v. Hannaford, (1950) 1 KB 18(A). The question at issue in that case was whether the British Transport Commission, which was a statutory authority, was a servant or the agent of the Crown and whether its property was as much subject to the Rent Restriction Acts as the property of any other person.

It was argued on behalf of the respondents that the British Transport Commission was an agent of the Government and that the Ministry of Transport had complete control over the business of the Company, it was the Minister of Transport who appointed Directors and fixed their remuneration. The Minister of Transport was given power to give the Company directions of a general nature in matters which appeared to him to affect the national interest as to which he was the sole judge, and the Directors of the Company were bound to obey such directions.

It was, therefore, contended on behalf of the respondents that the Minister's control was complete and the property of the Transport Commission was Crown property and the Rent Restriction Acts had no application to such property. This argument was rejected by "the Court of Appeal and Denning L. J. who pronounced the judgment of the unanimous Court held that the Transport Commission was not a servant or agent of the Crown and it was not a Government department and was not entitled to Crown privileges. At page 23 Denning L. J. states :

"But there are other persons who have also a vital interest in its affairs. All those who use the services which it provides -- and who does not? --and all whose supplies depend on it, in short everyone in the land, is concerned in seeing that it is properly run. The protection of the interests of all these taxpayer, user and beneficiary -- is entrusted by Parliament to the Minister of Transport. He is given powers over this corporation which are as great as those possessed by a man who holds all the shares in a private company, subject however, as such a man is

not, to a duty to account to Parliament for his stewardship.

It is the Minister who appoints the directors -- the members of the Commission -- and fixes their remuneration. They must give him any information he wants; and, lest they should not prove amenable to his suggestions as to the policy they should adopt, he is given power to give them directions of a general nature, in matters which appear to him to affect the national interest, as to which he is the sole judge, and they are then bound to obey. These are great powers but still we cannot regard the corporation as being his agent, any more than a company is the agent of the shareholders, or even of a sole shareholder.

In the eye of the law, the corporation is its own master and is answerable as fully as any other person or corporation. It is not the Crown and has none of the immunities or privileges of the Crown. Its servants are not civil servants, and its property is not Crown property. It is as much bound by Acts of Parliament as any other subject of the King. It is, of course, a public authority and its purposes, no doubt, are public purposes, but it is not a government department nor do its powers fall within the province of government."

13. The same proposition, was reaffirmed by the Court of Appeal in a subsequent case, *Ebbw Vale Urban District Council v. South Wales Traffic Area Licensing Authority*, (1951) 2 KB 366. In that case the British Transport Commission acting under the Transport Act of 1947 acquired all the shares of a passenger road transport company with power to appoint and dismiss all their directors, the company thus becoming a hundred per cent subsidiary of the commission. There was no evidence that the Commission had in fact appointed the company to act as their agent.

The company applied, to a licensing authority for public service vehicles u/s 72, Sub-section (1) and (4), Road Traffic Act, 1930, to vary the conditions of road service licences then held by them, that is to increase the existing scale of fares. It was provided by Section 65, Sub-section (1) of the Transport Act, 1947, that Ss. 72 to 76, Road Traffic Act, "1930, do not apply to any passenger road transport service provided by the British Transport Commission or by any person acting as agent for the Commission.

It was held in these circumstances by the Court of Appeal that the licensing authority had jurisdiction to hear the application of the Company, since the service in question was not a passenger road transport service provided by the Commission or by any person acting as agent for the Commission, At page 370 Cohen, L. J. states:

"Under the Ordinary rules of law, a parent company and a subsidiary company, even a 100 per cent subsidiary company, are distinct legal entities, and in the absence of an agency contract between the two companies one cannot be said to be the agent of the other. That seems to me to be clearly established by *Salomon v. Salomon & Co. Ltd.* 1897 AC 22 (D), and by the observations of Tomlin J., in. *British Thomson Houston Co. Ltd. v. Sterling Accessories Ltd.* (1924) 2 Ch 33 (D).

Tomlin J. said: "I do not think that any such inference" that is, an inference of agency between the directors and the company can be or ought to be drawn. It has been made plain by the House of Lords that for the purpose of establishing contractual liability it is not possible, even in the case of the so-called one-man companies, to go behind the legal corporate entity of the company and treat the creator and controller of the company as the real contractor merely because he is the creator and controller, if he is to be fixed with liability as principal, the agency of the company must be established substantively and cannot be inferred from the holding of director's office and the control of the shares alone; see 1897 AC 22 (C). Any other conclusion would have nullified the purpose for which the creation of limited companies was authorised by the legislature".

14. The principle laid down in these two authorities supports the conclusion which I have already drawn, namely, that the Company has an independent legal entity and an independent legal existence and it cannot be said to be a department of the State Government or its delegate or agent. It is true that the ownership, control and management of the Company is completely vested in the President of India but I do not think that the Court is entitled for determination of the question in the present case to "pierce the veil of corporate entity and to examine the reality beneath."

My concluded opinion on this point is that the petitioner is only a servant of the Company and, cannot be deemed to be a servant of the Union Government and Articles 311 and 320 of the Constitution have no application to this case.

15. It was submitted on behalf of the petitioner by Mr. B.C. Ghose that even if the petitioner was servant of the Company and not a servant of the Union Government, it was necessary for the respondents to give notice and an opportunity to show cause before terminating his service. Mr. B.C. Ghose submitted that his argument was based not on Arts. 311 and 320 of the Constitution but on principles of natural justice.

I am unable to accept this argument of learned counsel as valid. It is necessary, in the present case to discover what are the terms of the contract between the parties. As I have already stated, there was a service agreement between the petitioner and the Government of India which is Annexure J of the petitioner's affidavit. I have also referred to Annexures IV and V from which it is clear that the petitioner agreed to serve under the newly constituted Company on the same terms as were mentioned in the service agreement, except with regard to the changes in the leave rules. This inference is also supported by a statement of the petitioner in para. 5 of his affidavit.

In para. 5 the petitioner states that he "continued to serve on the basis of his existing contract until the expiry of his contract, viz., 15-11-1953. "In para. 4 also the petitioner states that "upon transfer of the assets of the Fertilizer Project Sindri, to the said limited company, the persons working in the Said Project under contract service continued to serve on the same contract basis till the

expiry of their existing contract."

It is true that the term of the contract expired on 15-11-1953. Thereafter there was no express contract between the parties, but there was an implied contract between the parties. There is, however, material to show what are the terms of this implied contract. I have already referred to Annexures IV and V from which it appears that the petitioner agreed to serve the Company on the same terms and conditions as were embodied in the service agreement (Annexure J) subject, of course, to the - exception of the condition as to leave rules.

There is an important circumstance to show that even after 15-1-1952, the parties adopted and acted upon the terms embodied in the service agreement (Annexure J). Two increments of salary were granted to the petitioner precisely in accordance with the terms of the service agreement. The increments were sanctioned on 29-8-1952 (vide Annexure O of the petitioner's affidavit--Reference No. PP-6(117)/49-Pors. I, dated 29-8-1952).

In para. 5 of the supplementary affidavit also the petitioner states that he continued in service without a fresh agreement under the ordinary service rules obtaining in the services at Sindri. There is hence sufficient material to support the conclusion that even after 15-11-1953, the petitioner continued to serve the Company and there was an implied contract between the parties and the terms of the implied contract were exactly the same as the terms of the service contract (Annexure J), subject, of course, to the exception of the condition as to leave rules.

It must also be taken that Article 69(4) of the Articles of Association was also one of the implied terms of the contract between the parties. As I have said, Article 69(4) empowered the Directors of the Company to appoint and remove any officer, clerk, agent or servant, whether permanent, temporary or under special contract. It is manifest, therefore, that the petitioner has been discharged by the Company, in terms of an ordinary service contract.

There is nothing in Article 69(4) of the Articles of Association which made it obligatory on the Directors to act Judicially or proceed judicially or give notice to the petitioner before terminating his service. There was no question in this case of condemnation of the petitioner for any offence or for any default. It is difficult to conceive, therefore, how the principle of the maxim audi alteram partem applies to this case.

I do not" think that any question of natural justice arises in the circumstances of this case and as a matter of law the petitioner is not entitled to any notice or an opportunity to show cause before the respondents terminated his service in terms of the service contract. The argument of Mr. B.C. Ghose on this part of the case must, therefore, fail. .

The view that I have expressed is borne out by a decision of the Supreme Court in Satish Chandra Anand Vs. The Union of India (UOI), . In that case the

petitioner was employed by the Government of India on a five year contract in the Resettlement and Employment Directorate of the Ministry of Labour. When his contract was due to expire, the Government made him a new offer to continue him in service in his post temporarily for the period of the Resettlement and Employment Organization, on the condition that he will be governed by the Central Services (Temporary Services) Rules, 1949, which provided for termination of the contract by one month's notice on either side.

The petitioner accepted the offer and continued in service, but subsequently his services were terminated after giving him one month's notice. The petitioner applied for relief under Article 32(1) of the Constitution, alleging that his fundamental rights under Arts. 311, 14 and 16(1) of the Constitution were infringed.

It was held by the Supreme Court that Article 311 of the Constitution had no application and this was not a case of dismissal or removal from service, nor a reduction in rank, but only an ordinary case of a contract being terminated by notice under one of its clauses, the difference between dismissal and removal being that the former ordinarily disqualifies from future employment but not the latter.

The same position was reaffirmed by the Supreme Court in a subsequent case in *Shyam Lal Vs. The State of Uttar Pradesh and The Union of India (UOI)*, . It was decided in this case that the order of compulsory retirement was not tantamount to dismissal or removal and did not attract the provisions of Article 311 of the Constitution, and that an order of the President of India compulsorily retiring an officer cannot be challenged on the ground that he had not been afforded full opportunity of showing cause against the action sought to be taken in regard to him.

The principles of these two decisions have a direct application to the present case and my concluded opinion is that the petitioner was discharged by the respondents in terms of the contract of the service and the petitioner was not entitled to a notice from the respondents or an opportunity to show cause before the order terminating the service was passed.

16. For the reasons I have attempted to express I hold that there is no case made out by the petitioner for the issue of a writ under Article 226 of the Constitution of India. The application accordingly fails and must be dismissed with costs. Hearing fee Rs. 150/-.

Raj Kishore Prasad J.

17. I agree.